

(i) At public expense;  
 (ii)(A) As the complete elementary or secondary educational program as determined under State law through grade 12; and

(B) Preschool education, whether or not included as elementary education by State law;

(iii) In a school of the local educational agency (LEA) or under a tuition arrangement with another LEA or other educational entity; and

(iv) Under public supervision and direction, except with respect to children with disabilities.

(2) For the purpose of paragraph (1)(i) of this definition, education is provided at public expense if—

(i) There is no tuition charge to the child or the child's parents; and

(ii) Federal funds, other than funds under the Act, do not provide a substantial portion of the educational program.

(3) For the purpose of paragraph (1)(ii) of this definition, the complete elementary or secondary educational program is the program recognized by the State as meeting all requirements for elementary or secondary education for the children claimed and, except for preschool education, does not include a program that provides only—

(i) Supplementary services or instruction; or

(ii) A portion of the required educational program.

(4) For the purpose of paragraph (1)(iii) of this definition, a tuition arrangement must—

(i) Satisfy all applicable legal requirements in the State; and

(ii) Genuinely reflect the applicant LEA's responsibility to provide a free public education to the children claimed under section 8003.

(5) For the purpose of paragraph (1)(iv) of this definition, education provided under public supervision and direction means education that is provided—

(i) In a school of the applicant LEA or another LEA; or

(ii) By another educational entity, over which the applicant LEA, or other public agency, exercises authority with respect to the significant aspects of the educational program for the children claimed. The Secretary considers sig-

nificant aspects of the educational program to include administrative decisions relating to teachers, instruction, and curriculum.

(Authority: 20 U.S.C. 7703, 7709, 7713(6))

**§ 222.31 To which local educational agencies does the Secretary make basic support payments under section 8003(b) of the Act?**

The Secretary makes payments to an LEA with an otherwise approvable application for children claimed under section 8003(b) of the Act if—

(a) The LEA meets the requirements in subpart A of these regulations and this subpart; and

(b)(1) The LEA is responsible under applicable State or Federal law for providing a free public education to those children;

(2) The LEA is providing a free public education to those children; and

(3) The State provides funds for the education of those children on the same basis as all other public school children in the State, unless permitted otherwise under section 8009 of the Act.

(Authority: 20 U.S.C. 7703 and 7709)

**§ 222.32 What information does the Secretary use to determine a local educational agency's basic support payment?**

(a) The Secretary determines an LEA's payment under section 8003(b) on the basis of information in the LEA's application, including information regarding the membership of federally connected children.

(b) The LEA must supply information in its application regarding its federally connected membership on the basis of any count described in §§ 222.33 through 222.35.

(Approved by the Office of Management and Budget under control number 1810-0036)

(Authority: 20 U.S.C. 7703 and 7705)

**§ 222.33 When must an applicant make its first or only membership count?**

(a)(1) An applicant must select a day in the current school year as the survey date for making the first membership count, which must be no earlier than the fourth day of the regular school year and before January 31.